

No. 842

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

FRYE-BRUHN COMPANY (a Corporation),
Appellant,

vs.

HERMAN MEYER,

Appellee.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States District Court
for the District of Alaska, Division No. 1.

The Filmer Brothers Co. Print, 424 Sansome St., S. F.

FILED

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*In the United States District Court, in and for the District of
Alaska, Division No. 1.*

FRYE-BRUHN COMPANY (a Corpora-
tion),

Plaintiff,

vs.

HERMAN MEYER,

Defendant.

Marshal's Return.

United States,
District of Alaska,
Division No. 1. } ss.

I, James M. Shoup, United States marshal, in and for the District of Alaska, Division No. 1, do hereby certify that the original citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, issued out of the above-entitled cause, appealing from an order modifying a temporary restraining order issued out of said cause in the said court, which said modification was to the extent of not restraining the firm of Maloney & Cobb, in drawing down one thousand (\$1,000) dollars of moneys in the hands of the clerk of this court, came into my possession on the 28th day of April, 1902, and that I served the same upon Herman Meyer, the above-named defendant, personally, on the 28th day of May, 1902, by leaving with him personally at Skagway, Alaska, a full,

true and correct copy of the same, certified to be such by the clerk of the above-entitled court.

JAMES M. SHOUP,
United States Marshal.

By John W. Snook,
Deputy.

In the United States of America, }
District of Alaska, } ss.

I, W. J. Hills, clerk of the United States District Court in and for the District of Alaska, Division No. 1, at Juneau, Alaska, do hereby certify that the return of the United States marshal, James M. Shoup, by his deputy, John W. Snook, of the service of the citation on appeal to the United States Circuit Court, in and for the Ninth Circuit, upon Herman Meyer, personally, in the case of Frye-Bruhn & Co., a corporation, plaintiff, vs. Herman Meyer, No. 154, of this court, and hereto attached, was this day filed with me as such clerk of said court, and in obedience to the citation on appeal to the said United States Circuit Court of Appeals, I hereby certify to the same as part of the record of said cause, which has been filed in my office subsequent to the certifying of said record to the Circuit Court of Appeals, and the said return, together with the other record heretofore forwarded to the clerk of the said United States Circuit Court of Appeals for the Ninth Circuit, constitute a full, complete and entire record of said cause in my office.

Dated this 31st day of May, 1902.

[Seal]

W. J. HILLS,
Clerk.

[Endorsed]: No. 842. In the United States District Court, for District of Alaska, Division No. 1. Frye-Bruhn Company, Plaintiff, vs. Herman Meyer, Defendant. Marshal's Return. Filed May 31, 1902. W. J. Hills, Clerk. By _____ Deputy. Winn & Shackelford, Attorneys for Plaintiff, Juneau, Alaska.

Filed June 9, 1902. F. D. Monckton, Clerk, United States Circuit Court of Appeals, for the Ninth Circuit.



In the United States District Court, for the District of Alaska, Division No. 1, at Skaguay.

FRYE-BRUHN COMPANY (a Corpora-	}
tion),	
vs.	Plaintiff,
HERMAN MEYER,	}

Orders and Pleas in Said Cause Constituting Record.

Be it remembered that on March 21st, 1902, the following bill of complaint was filed in the above and foregoing cause, in words and figures, to wit:

*In the United States District Court, in and for the District of
Alaska, Division No. 1, At Skaguay.*

FREYE-BRUHN COMPANY, (a Corpor- ation),	vs.	Plaintiff, Defendant.	}	No. —.
HERMAN MEYER,				

Bill of Complaint.

To the Honorable MELVILLE C. BROWN, Judge of the
above-entitled Court:

Comes now the plaintiff, and complaining of the above-
named defendant, for cause of action alleges:

I.

That at all the times mentioned herein the above-
named plaintiff, Frye-Bruhn Company, has been and now
is a corporation, duly organized under the laws of the
State of Washington, and doing business in the District
of Alaska.

II.

That on June 26th, 1899, in the Superior Court of the
State of Washington, in and for the county of King, the
same being, and now is, a court of record and general
jurisdiction, in a suit wherein Charles H. Frye was plain-
tiff, and the above-named Herman Meyer, defendant, the
said Charles H. Frye, plaintiff, recovered a judgment

against the said Herman Meyer, defendant in the sum of \$3,140.10, and costs amounting to \$26, together with interest thereon at the rate of ten per cent per annum from June 28th, 1899, which judgment is in words and figures as follows, to wit:

“In the Superior Court of the State of Washington, in and for King County.

CHARLES H. FRYE,

Plaintiff,

vs.

HERMAN MEYER,

Defendant.)

No. —

Judgment.

This cause having come on for trial on this 27th day of June, 1899, before the Court, without a jury, (a jury having been waived by oral consent of the respective parties in open court), and entered in the minutes of the court, Messrs. Piles, Donoworth & Howe, appearing for the plaintiff, and Messrs, Ballenger, Ronald & Battle, appearing for the defendant, whereupon the cause proceeded to trial. Upon introduction of evidence on behalf of the plaintiff, the demurrer of the plaintiff having been sustained to the affirmative defenses set forth in defendant's answer, and the defendant having announced that he did not desire to further plead, but stood upon the said affirmative defenses, and having failed to offer any evidence in his behalf, the Court made the findings of fact and conclusions of law, which are now on file in this court and cause, and from which it appears among other

things, that the defendant, Herman Meyer, is indebted to the plaintiff, Charles H. Frye, in the sum of three thousand one hundred and forty and 10-100 (\$3,140.10), dollars, on the note sued upon in this action, and that judgment be entered in favor of the plaintiff for said sum and interest; and the Court being now fully advised in the premises, it is ordered, considered, and adjudged, by the Court that the plaintiff, Charles H. Frye, do have and recover of and from the defendant, Herman Meyer, the sum of three thousand one hundred and forty and 10-100 dollars, together with interest thereon at the legal rate from this date until paid, including the costs and disbursements of this action, to be taxed and allowed by the clerk, in the sum of ———— dollars, and that execution issue therefor. To the foregoing judgment, defendant excepts.

June 28th, 1899.

E. D. BENSON,
Judge.

O. K. Ballenger, R. B. etc.

Filed June 28th, 1899. George M. Holloway, Clerk.
T. H. P.”

Which said judgment was duly given and made, and the same is hereby referred to and made a part of this bill of complaint.

III.

That afterward, to wit, on the 26th day of January, 1900, an execution was duly issued out of the said Superior Court in and for the county of King, State of Washington, in said cause, directed to the sheriff of said county of King, directing said sheriff to seize and take into

execution property of the said Herman Meyer, sufficient to pay said judgment of \$3,140.10, together with the costs which had theretofore been taxed in the sum of \$26; which said execution was, on the 26th day of January 1900, duly and regularly returned, unsatisfied, and no property found; that the legal rate of interest is now and at all times mentioned herein, in the State of Washington, ten per cent per annum.

IV.

That on the 27th day of January, 1900, by an instrument in writing duly executed, signed, delivered, and witnessed, the said Charles H. Frye, for a valuable consideration, duly, regularly and legally assigned, and set over unto the plaintiff herein, Frye-Bruhn Company, a corporation, said judgment, and the said Frye-Bruhn Company has been ever since said date, and is now, the owner and holder of said judgment, and that no property of the said defendant, Herman Meyer, can be found to satisfy the same or any part thereof.

V.

That on the — day of ———, 1899, the said Herman Meyer duly and regularly commenced an action in the United States District Court, in and for the District of Alaska, in that part of said District, which is now Division No. 1, which said cause was entitled "Herman Meyer, Complainant, vs. Frye-Bruhn Company (a Corporation), Defendant," and numbered 849; and that thereafter such proceedings were had, that on the 21st day of March, 1902, in this court the said Herman Meyer recovered a judgment against the defendant herein for the sum of 45 per cent of \$6,295, after paying the costs of

said action No. 849; which said judgment is in writing, and duly signed and entered by this Court, and is now of record in said cause No. 849; the said plaintiff having appeared in said cause and contested the same, and said judgment is now a valid, subsisting, and outstanding judgment against the said Frye-Bruhn Company, the plaintiff in this action, and is held and owned by the said Herman Meyer, defendant herein; that there is money in the hands of the clerk of this court, paid to him by Frye-Bruhn Company, which is ordered by this Court to be applied on said judgment, and is sufficient in amount to pay the same.

VI.

That the said United States District Court, in and for the District of Alaska, in which said court the last-mentioned judgment was rendered, is a court of record and general jurisdiction, and is the same court as the United States District Court, in and for the District of Alaska, Division No. 1, in which this action of Frye-Bruhn Company vs. Herman Meyer is now being prosecuted.

VII.

That this plaintiff believes and alleges the fact to be: that the plaintiff herein is now and will be in the future unable to collect the said judgment, recovered in the Superior Court of King County, State of Washington, against the said Herman Meyer; that the said Herman Meyer is either insolvent and has no property out of which to satisfy said judgment, or has his property sequestered and in the name of other persons, in order to defeat the rights of the plaintiff. That the plaintiff herein has made diligent search for property of the said Her-

man Meyer, out of which to satisfy said judgment so held by plaintiff, and is by said search, and invoking the aid of proper court officials in the premises, unable to find any property in the State of Washington or in the jurisdiction of this Court out of which to satisfy the said judgment, or any part thereof.

That the plaintiff herein has no remedy at law in the premises, and by which his rights may be protected as set forth herein, and is able and has property to respond to said judgment of Herman Meyer obtained in this Court, and out of which said judgment may be satisfied. That the said Herman Meyer has threatened, and will, unless restrained by this Court, have an execution issued out of said cause No. 849 in this court, and the property of this plaintiff levied upon to satisfy said judgment and costs, to the great and irreparable damage of this plaintiff, and will leave plaintiff without any remedy for the collection of its said judgment recovered in the Superior Court in the State of Washington as aforesaid; or the said Herman Meyer will, and has threatened to assign his said judgment in Cause 849, to other persons in order to defeat the claim of the plaintiff herein, and will commit all or some of said deeds and actions complained of herein, unless restrained by an order of this Court, until the plaintiff's rights are established herein so that the judgment recovered by this plaintiff in the Superior Court of the State of Washington, in and for the County of King, against the said Herman Meyer for the sum of \$3,140.10 and costs and interest therein may be an offset to the judgment recovered by the said Herman Meyer in this Court in Cause 849, or

that one judgment may be applied as payment, as far as the same will reach, upon the other.

That plaintiff believes that an emergency exists for the granting of a temporary restraining order herein without notice; that should notice be served herein before a hearing could be had thereon, the said Herman Meyer could and would have committed the wrongs complained of herein and thus defeat the rights of the plaintiff in the premises. Wherefore plaintiff prays for judgment against the defendant herein:

1. That a restraining order and temporary injunction issue immediately herein restraining the said Herman Meyer, during the pendency of this action, from doing the acts or any of the acts complained of herein, and from assigning the judgment to any person or persons whomsoever so recovered by him in said Cause No. 849 in this court, or having an execution issued out of this court in said cause and upon said judgment.

2. That upon a final hearing of this cause the said judgment recovered by this plaintiff against the said Herman Meyer in the Superior Court of the County of King, State of Washington, be established and affirmed, and that this plaintiff have judgment therein against the said defendant for the sum of \$3,140.10, together with costs amounting to the sum of \$26, and with interest on said judgment at the rate of ten per cent per annum from June 28th, 1899, together with its costs expended herein and disbursements; and that one of the judgments herein be offset against the other or payment of one be offset against the other; and if any deficiency in favor of plaintiff, that it have judgment for the same and costs of this

action; and that the clerk of this court during the pendency of this action be restrained or ordered by this Honorable Court to pay no money out which is in his hands in said Cause Number 849, of Herman Meyer against Frye-Bruhn Company, a corporation, on the judgment recovered in said cause or otherwise, and for such other and further relief as to this Court may seem just and equitable in the premises.

WINN & SHACKLEFORD,
Attorneys for Plaintiff.

United States of America, }
District of Alaska. } ss.

M. G. Rogers, being first duly sworn, on oath deposes and says:

I am the agent and manager at Juneau, Alaska, of Frye-Bruhn Company, a corporation; that I have heard read the foregoing bill of complaint, know the contents thereof, and that the same is true.

M. G. ROGERS.

Subscribed and sworn to before me this 17th day of March, 1902.

JNO. R. WINN,
Notary Public, Alaska.

[Endorsed]: No. 154. In the United States District Court, for the District of Alaska, Division No. 1. Frye-Bruhn Company, a Corporation, vs. Herman Meyer. Bill of Complaint. Filed March 21, 1902. W. J. Hills, Clerk. Winn & Shackelford, Attorneys for Plaintiff.

And on the same day, there was filed in said cause the affidavit of John R. Winn, which is in words and figures following to wit:

*In the United States District Court in and for the District of
Alaska, Division No. 1, at Skaguay.*

FRYE-BRUHN COMPANY (a Corpo- ration),	vs.	Plaintiff,
HERMAN MEYER,		Defendant.

Affidavit of Jno. R. Winn.

United States of America, }
District of Alaska. } ss.

Jno. R. Winn, being first duly sworn, on oath deposes and says: That I am now and for some time past have been attorney in Alaska for Frye-Bruhn Company, the above-named corporation, and that I was attorney for the said Frye-Bruhn Company in action which has just been prosecuted to a final determination in this court and entitled "Herman Meyer vs. Frye-Bruhn Company (a corporation)," and numbered 849 in this court; that in said cause last mentioned a decree has been entered and judgment allowing the said Herman Meyer, after costs are paid, 45 per cent of \$6,295, which fund arose from the sale of property and rents thereof which the said Frye-Bruhn Company, a corporation, claimed as its prop-

erty, but which was adjudged to be a partnership property of the above plaintiff and defendant after the trial of said action numbered 849 in this court. This affiant further states that there is money enough, to wit, the sum of \$3,857.50 in the hands of the clerk of this Court, to pay the said Herman Meyer his 45 per cent of said amount mentioned herein. That the said sum of \$3,857.50, was derived from the sale of the said property mentioned herein, and was paid by said Frye-Bruhn Company into this court under an order, to await the outcome of this suit; which was property that the said Frye-Bruhn Company had in its possession before the commencement of said action number 849 in this court, and which the said Frye-Bruhn Company claimed as its property, and which it had been in possession of since and before the commencement of said action, and has remained in possession thereof, claiming the same as its property until the same was adjudged to be the property of Frye-Bruhn & Company, and was sold by an order of this Court and the funds paid into this court, as aforesaid, to abide the result of said action commenced by the said Herman Meyer, as aforesaid.

Affiant has read the complaint herein and from personal knowledge knows part of the facts therein stated to be true, and from record evidence, knows the remaining facts to be true.

JNO. R. WINN.

Subscribed and sworn to before me this 21st day of March, 1902.

[L. S.]

J. J. CLARKE,
Deputy Clerk.

[Endorsed]: No. 154. In the United States District Court, District of Alaska, Division No. 1, Frye-Bruhn Company, Affidavit. Filed March 21, 1902. W. J. Hills, Clerk. Winn & Shackelford, Attorneys for Plaintiff.

And be it further remembered that thereafter and upon the filing and consideration of the foregoing papers, the Court made its order herein in words and figures as follows:

In the United States District Court, in and for the District of Alaska, Division No. 1, at Skaguay.

FRYE-BRUHN COMPANY (a Corporation),	} Plaintiff,
vs.	
HERMAN MEYER,	} Defendant.

Restraining Order.

Plaintiff in the above-entitled cause having commenced an action in the above-entitled court against the above-named defendant, and having prayed for an injunction pending said action against the defendant, requiring him to refrain from certain acts in said complaint and hereinafter more particularly mentioned. On reading the said complaint in said action, duly verified, and it satisfactorily appearing to me therefrom that it is a proper case for an injunction pending an or-

der to show cause, and that sufficient grounds exist therefor, and an undertaking having been given, approved and as required by me in the sum of five hundred dollars;

It is therefore ordered by me, the Judge of the above-entitled court, that you, the said Herman Meyer, show cause before this Court at Skaguay, Alaska, on the 10th day of April, 1902, at two o'clock P. M. of said day, why you should not be restrained, and your attorneys and agents, and all others acting in aid or assistance of you, from certain acts and things complained of in the bill of complaint on file herein; and until such time you and each of you are hereby restrained and enjoined from assigning, selling, or negotiating or collecting any money thereon from the clerk of this Court or anyone, on that certain judgment or any interest therein, rendered and entered on the 21st day of March, 1902, in that certain cause in this court, wherein Herman Meyer is complainant and Frye-Bruhn Company, a corporation, is defendant, and numbered in this court 849, which said judgment is in favor of the said Herman Meyer and against the said Frye-Bruhn Company, a corporation; and all proceedings under said judgment are hereby stayed and the clerk of this Court is ordered not to pay out any money upon said judgment in said cause, but to hold any money and retain the same within his possession which he may have in said cause numbered 849, until the further order of this Court.

Done in open court this 21st day of March, 1902.

M. C. BROWN,
Judge.

[Endorsed]: No. 154. In the United States District Court in the District of Alaska, Division No. 1. Frye-Bruhn Company (a Corporation), Plaintiff, vs. Herman Meyer, Defendant. Restraining Order. Filed March 21, 1902. W. J. Hills, Clerk. Winn & Shackelford, Attorneys for Plaintiff.

In the United States District Court in and for the District of Alaska, Division No. 1. at Skaguay.

FRYE-BRUHN COMPANY (a Corporation),	Plaintiff,	}	No. —.
vs.			
HERMAN MEYER,	Defendant.	}	

Undertaking.

Know all men by these presents, that we, Frye-Bruhn Company, a corporation, as principal, and C. B. Haraden as surety, all of Skaguay, Alaska, are held and firmly bound unto the above-named defendant Herman Meyer in the sum of five hundred dollars, for which sum payment well and truly to be made we bind ourselves and each of ourselves, our heirs, executors, administrators and assigns firmly by these presents.

The condition of the above obligation is such that:

Whereas, the above-named plaintiff has commenced an action in the above-entitled court, (or is about to commence the same), against the above-named defendant,

and is about to apply for an injunction in said action against the defendant, enjoining and restraining him from the commission of certain acts as in the complaint in the said action is more particularly set forth and described.

Now therefore, we the undersigned, in consideration of the premises and of the issuing of said injunction, do jointly and severally undertake in the sum of five hundred dollars, and promise to the effect that in case said injunction shall issue, the said plaintiff will pay to the said party enjoined such damages not exceeding five hundred dollars and all costs and disbursements that may be decreed to the defendant, and that he may sustain by reason of the injunction if the same be wrongful or without sufficient cause.

Witness our hands and seals this 22d day of November, A. D., 1901.

FRYE-BRUHN COMPANY,

Principal.

J. J. DALY,

Agent.

C. B. HARADEN,

Surety.

United States of America, }
 District of Alaska. . } ss.

C. B. Haraden, being first duly sworn, on oath deposes and says: I am the sureties mentioned in the foregoing undertaking, and am a resident of Skaguay, Alaska, and am worth the sum of one thousand dollars over and above all my just debts and liabilities and property exempt from execution; and that I am not an attorney at law, clerk of a court, or United States marshal or an officer of any court whatsoever.

C. B. HARADEN.

Subscribed and sworn to before me this 21st day of March, 1901.

[L. S.]

I. N. WILCOXEN,
 Notary Public for Alaska.

Approved March 21, 1901.

W. H. HILLS,
 Clerk.

[Endorsed]: No.154. In the United States District Court in the District of Alaska, Division No. 1. Frye-Bruhn Company (a Corporation), Plaintiff, vs. Herman Meyer, Defendant. Undertaking. Filed March 21, 1902. W. J. Hills, Clerk. Winn & Shackelford, Attorneys for Plaintiff.

Thereafter, and to wit, on the 11th day of April, 1902, the following motion and affidavit were filed in said cause, in words and figures as follows:

*In the United States District Court, for the District of Alaska,
Division No. 1.*

FRYE-BRUHN COMPANY,) Plaintiff,	No. 154.
vs.		
HERMAN MEYER,) Defendant,	

Motion to Modify Restraining Order.

Now comes Malony & Cobb in their own behalf and move the Court to modify the restraining order heretofore made herein to the extent of one thousand dollars (\$1,000), and shows that they have a lien upon the sum of money the payment of which is restrained, superior to any claim against the same in the part of plaintiff, as fully appears from the files in said cause and the affidavit of J. H. Cobb, appended hereto and made a part hereof.

They further show that said restraining order was improvidently issued in this: That it appears from the complaint herein that this Court has no jurisdiction as a court of equity of the cause of action sued on; and that complainant has no such interest in or lien upon the fund in court, the payment of which is restrained, as to

entitle it to the injunction prayed for, or to any order or relief affecting the same.

MALONY & COBB,

For Themselves.

[Endorsed]: No. 154. District Court for Alaska, Division No. 1. Frye-Bruhn Company vs. Herman Meyer. Motion of Malony & Cobb. Filed April 11, 1902. W. J. Hills, Clerk.

United States of America, }
District of Alaska. } ss.

J. H. Cobb, being duly sworn on oath, says: That he is a member of the firm of Malony & Cobb, members of the bar of this court, and that said firm have been attorneys for the plaintiff in the case of Herman Meyer vs. Frye-Bruhn Company since early in the year 1899; that it was especially agreed and understood by and between them and the said Meyer that their compensation for services in said cause (except some small payments to cover actual expenses) should be paid out of the fund recovered therein and secured in said cause to the plaintiff; that said compensation was to be one thousand dollars (\$1,000) and an additional amount dependent upon certain contingencies; that on and pursuant to said employment there is now due the said Malony & Cobb the sum of one thousand dollars, payable primarily out of the fund in the registry of the Court in said cause and upon which they have a lien therefore.

J. H. COBB.

Subscribed and sworn to before me this 11th day of April, 1902.

[L. S.]

W. J. HILLS,
Clerk.

Be it further remembered, that thereafter and on the 12th day of April, 1902, the objection of attorneys for the plaintiff herein was filed in words and figures as follows:

United States District Court for Alaska, Division No. 1, Skaguay.

FRYE-BRUHN COMPANY,

Plaintiff,

vs.

HERMAN MEYER,

Defendant,

Objection to Motion to Modify Restraining Order.

Comes now the above plaintiff and appears specially herein in the matter of the application of Malony & Cobb for modification of the temporary restraining order granted herein, and objects to consideration of said application for the reason the Court has no jurisdiction to act in said matter and upon said application.

WINN & SHACKLEFORD,
Attorneys for Plaintiff.

[Endorsed]: 154. Frye-Bruhn Company, Plaintiff, vs. Herman Meyer, Defendant. Objection. Filed April 12, 1902. W. J. Hills, Clerk. Winn & Shackelford, Attorneys, Plaintiff.

Be it further remembered that thereafter, and to wit, on the 15th day of April, 1902, the Court made its certain order in said cause, in words and figures as follows:

FRYE-BRUHN COMPANY, }
 vs. }
 HERMAN MEYER. }

Order Modifying Restraining Order.

On this day this cause came on to be heard upon the motion of Malony & Cobb to modify the restraining order heretofore issued herein, to the extent of permitting them to withdraw the sum of one thousand (\$1,000) dollars from the fund in the registry of the Court, the payment of which by the clerk was restrained herein, and the Court having heard said motion, and the argument of counsel thereon, and being fully advised in the premises, it is therefore considered by the Court and it is so ordered, adjudged, and decreed, that the restraining order heretofore issued herein be modified to the extent of the interest of the said Malony & Cobb in the fund to be distributed, to wit: The sum of one thousand (\$1,000) dollars out of the fund decreed to Herman Meyer in the cause of Herman Meyer vs. Frye-Bruhn Co. No. 849.

Dated April 15th, 1902.

M. C. BROWN,
 Judge.

To which order and ruling of the Court, plaintiff by counsel excepts; and plaintiff is given twenty days in which to present its bill of exceptions and perfect appeal herein.

[Endorsed]: No. 154. In the United States District Court for Alaska, Division No. 1. Herman Meyer vs. Frye-Bruhn Company. Order. Filed April 15, 1902. W. J. Hills, Clerk.



And be it further remembered, that thereafter the following pleas and orders were made and filed in said cause, to wit:

*In the United States District Court for the District of Alaska,
Division No. 1.*

FRYE-BRUHN COMPANY (a Corporation),	Plaintiff,
vs.	
HERMAN MEYER,	Defendant.

Affidavit of J. J. Daly.

United States of America, }
District of Alaska. } ss.

J. J. Daly being first duly sworn on oath deposes and says: That I am now, and have been for some time past

connected in business with Frye-Bruhn Company, the above-named corporation, and know that the judgment which Charles H. Frye recovered against Herman Meyer in the Superior Court of King County, State of Washington, for \$3,140.10, was obtained on an indebtedness due Frye-Bruhn Company, but was held in trust by Charles H. Frye for the said Frye-Bruhn Company, said Charles H. Frye being at all times manager and president of said company. That the said judgment recovered for said amount is the same judgment that is set up in the above-entitled action now pending in this court, and is for an indebtedness that existed before the commencement of the action of Herman Meyer against Frye-Bruhn Company, in which last-named case a decision has just been rendered in this Court.

J. J. DALY.

Subscribed and sworn to before me this 14th day of April, 1902.

JNO. R. WINN,
Notary Public.

[Endorsed]: No. 154. District Court of Alaska, Division No. 1. Frye-Bruhn Company, vs. Herman Meyer. Affidavit. Filed April 15, 1902. W. J. Hills, Clerk.

*In the United States District Court, for the District of Alaska,
Division No. 1.*

FRYE-BRUHN COMPANY (a Corpora- tion),	Plaintiff, {
vs.	
HERMAN MEYER,	Defendant. }

Motion and Application.

Comes now the above plaintiff by its attorneys, Winn & Shackelford, upon the ruling of the Court made herein in the matter of the application of Malony & Cobb to modify the temporary restraining order heretofore granted in said cause, and moves the Court to allow the restraining order heretofore on the — day of March, 1902, granted in the above-entitled cause, and restraining the above-named defendant and his attorneys from doing certain matters and things therein set out, to remain in force and effect until the 5th day of May, 1902, or until a bill of exceptions is settled or an appeal perfected from the ruling and order made by this Honorable Court, and the modifying of said temporary restraining order upon the motion of the said Malony & Cobb.

And said plaintiff further applies to this Honorable Court for thirty days' time from the 15th day of April, 1902, in which to prepare a bill of exceptions and perfect the appeal from the ruling and order of the Court in

modifying said temporary restraining order on said motion of Malony & Cobb, made and filed herein as aforesaid.

WINN & SHACKLEFORD,
Attorneys for Plaintiff.

[Endorsed]: No. 154. District Court for Alaska, Division No. 1. Frye-Bruhn Company, vs. Herman Meyer. Motion and Application. Filed April 16, 1902. W. J. Hills, Clerk.

Whereupon, the following order was entered, to wit:

*In the United States District Court, for the District of Alaska,
Division No. 1.*

FRYE-BRUHN COMPANY (a Corporation),

Plaintiff,

vs.

HERMAN MEYER,

Defendant.

Order Granting Time to Present Bill of Exceptions.

Upon motion and application of the above-named plaintiff by its attorneys Winn and Shackelford, for time in which to settle the bill of exceptions and perfect an appeal from the order of the Court made herein on motion of Malony & Cobb to modify the temporary restraining order heretofore granted in the above-entitled cause

against the above-named defendant, his attorneys, etc., and on application by said plaintiff to restrain said temporary restraining order in force and effect, pending the time in which to perfect the appeal from said ruling of the Court:

It is ordered that the plaintiff herein have twenty days' time from the fifteenth day of April, 1902, in which to present to this Court, or the judge thereof, after adjournment of term, its bill of exceptions, and in perfecting said appeal; and that during said time, or until the 5th day of May, 1902, it is hereby ordered that the temporary restraining order heretofore on the 21st day of March, 1902, granted in the above-entitled cause, remain in full force, effect, and virtue against the parties set out, mentioned, and described therein.

Done in open court this 14 day of April, 1902.

M. C. BROWN,

Judge.

[Endorsed]: No. 154. District Court for Alaska, Division No. 1. Frye-Bruhn Company, vs. Herman Meyer. Order. Filed April 16, 1902. W. J. Hills, Clerk.

Be it further remembered, that thereafter, and to wit, on the 25th day of April, 1902, the plaintiff presented its petition on appeal in the words and figures following:

*In the United States District Court, for the District of Alaska,
Division No. 1.*

FRYE-BRUHN COMPANY (a Corporation),	} Plaintiff,	} No. 154.
vs.		
HERMAN MEYER,	} Defendant.	

Petition for Allowance of Appeal, etc.

The above-named plaintiff in the above-entitled cause, the Frye-Bruhn Company, a corporation, conceiving itself aggrieved by the interlocutory order, or order made herein on the 15th day of April, 1902, wherein and whereby it was ordered and decreed, that the temporary injunction or restraining order made in the above-entitled cause on application of above-named defendant, on the 21st day of March, 1902, among other things should be modified so as to allow or not to enjoin or restrain Malony & Cobb, attorneys, from withdrawing or taking out of the funds or money in the hands of the clerk of this Court paid therein upon a final decree entered in a cause in this Court wherein the above-named defendant was plaintiff, and above-named plaintiff, defendant, and in

which said last-mentioned cause, Malony & Cobb were attorneys for the plaintiff therein, Herman Meyer, and the amount which the said Malony & Cobb claimed in said cause, as aforesaid; and the extent of the modification of said temporary restraining order is the sum of one thousand dollars (\$1,000), do hereby appeal to the United States *Circuit Court, for the Ninth Circuit*, at San Francisco, California, from said order so made, modifying said temporary injunction or restraining order, for the reason set forth in the assignment of errors, which is filed herewith; and said plaintiff prays that this, their petition for their said appeal, may be allowed, and also that an order may be made fixing the amount of security which plaintiff shall give and furnish upon such appeal; and upon the giving of such security, and the retention of the said one thousand dollars (\$1,000), in the hands of this Court, to abide the result of such appeal; that the temporary restraining order heretofore granted in favor of plaintiff and against the above-named defendant on the 21st day of March, 1902, remain in full force and effect pending this appeal in so far as the same is modified, or not restraining Malony & Cobb from withdrawing from the hands of the clerk of this Court the said \$1,000, and that a transcript of the records and proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, San Francisco, California.

WINN & SHACKLEFORD,

Attorneys for Plaintiff.

Order.

The foregoing petition on appeal is granted, and the claim of appeal therein made is allowed.

Done in open court this 25th day of April, 1902.

M. C. BROWN,

Judge of the United States District Court for the District of Alaska, Division No. 1.

[Endorsed]: No. 154. In the United States District Court, for District of Alaska. Frye-Bruhn Company, Plaintiff, vs. Herman Meyer, Defendant. Petition for Appeal. Filed April 25, 1902. W. J. Hills, Clerk. Winn & Shackelford, Attorneys for Plaintiff. Juneau, Alaska.

In the United States District Court, in and for the District of Alaska, Division No. 1.

FRYE-BRUHN COMPANY (a Corporation),	vs.	HERMAN MEYER,	}	No. 154.
			Plaintiff,	
			Defendant.	

Assignment of Errors.

Comes now the above-named plaintiff and files the following assignment of error upon which it will rely on appeal herein:

First. That the Court erred in overruling plaintiff's objections filed herein to the motion filed by Malony & Cobb to modify the restraining order made and entered by this Court on the 21st day of March, 1902; and erred in the consideration of said motion of Malony & Cobb, over the objections filed herein by said plaintiff as aforesaid.

Second. The Court erred in granting the order to modify the injunction granted herein on the 21st day of March, 1902, so that the same would not restrain Malony & Cobb from withdrawing from the funds in Court, one thousand dollars (\$1,000), which said order modifying said injunction or restraining order was made and entered herein on the 15th day of April, 1902, and on motion of the said Malony & Cobb based upon the affidavit of J. H. Cobb, and the files in this cause.

WINN & SHACKLEFORD,

Attorneys for Plaintiff.

[Endorsed]: No. 154. In the United States District Court for District of Alaska. Frye-Bruhn Company, Plaintiff vs. Herman Meyer, Defendant. Assignment of Errors. Filed April 25, 1902. W. J. Hills, Clerk. Winn & Shackleford, Attorneys for Plaintiff. Juneau, Alaska.

*In the United States District Court, for the District of Alaska,
Division No. 1.*

FRYE-BRUHN COMPANY (a Corpora-
tion),

Plaintiff,

vs.

HERMAN MEYER,

Defendant.

Order Fixing Amount of Bond.

Plaintiff herein having this day filed its petition for appeal from a certain order made and entered herein on the 15th day of April, 1902, modifying a certain temporary restraining order made and entered herein on the 21st day of March, 1902, to the United States Circuit Court of Appeals, for the Ninth Judicial Circuit, together with an assignment of errors within due time, and also praying that an order be made fixing the amount of security which the plaintiff should give and furnish upon said appeal, and that upon the giving of said security all further proceedings of this Court be suspended in relation to the operation of said order of modification made and entered on the said 15th day of April, 1902, until the determination of said appeal by said United States Circuit Court of Appeals for the Ninth Judicial Circuit; and said petition having this day been duly allowed:

Now, therefore, it is ordered that upon the said plaintiff filing with the clerk of this Court a good and sufficient bond in the sum of two thousand dollars to the effect

that if the said plaintiff and appellant shall prosecute said appeal to effect, and answer all damages and costs if it fail to make its plea good, then the said obligation to be void; else to remain in full force and virtue, the said bond to be approved by the Court; that all further proceedings under and by virtue of said order of April 15th, modifying said temporary restraining order of March 21st, 1902, be and they are, hereby suspended and stayed until the determination of said appeal by said United States Circuit Court of Appeals, and said order of March 21st, continued in effect to the extent of said modification pending said appeal.

Done in open Court this 25th day of April, A. D. 1902.

M. C. BROWN,
Judge.

[Endorsed]: No. 154. Order. Filed April 25th, 1902.
W. J. Hills, Clerk.

*In the United States District Court, for the District of Alaska,
Division No. 1.*

FRYE-BRUHN COMPANY (a Corpora-
tion),
vs.
HERMAN MEYER,
Plaintiff,
Defendant.

Bond on Appeal.

Know all men by these presents, that we, Frye-Bruhn Company, a corporation, as principal, and D. C. Brownell

and C. B. Haraden as sureties, are jointly and severally held and firmly bound unto the above-named Herman Meyer, and unto John F. Malony and J. H. Cobb, co-partners, under the firm name and style of Malony & Cobb, and each of them, in the sum of two thousand (\$2,000) dollars, lawful money of the United States of America, to be paid to them, and each of them, their executors or administrators, and for which payment, well and truly to be made we bind ourselves, our, and each of our heirs, executors, administrators, and assigns jointly and severally firmly by these presents.

Sealed with our seals, and dated the 25th day of April, 1902.

The condition of the above obligation is such that whereas the said Frye-Bruhn Company have taken an appeal to the Circuit Court of Appeals for the Ninth Circuit, to reverse an interlocutory order rendered and entered by the United States District Court for the District of Alaska, Division No. 1, which order was made and entered in the above-entitled suit on the 15th day of April, 1902, and was a modification of a certain temporary restraining order made and entered in the above-entitled cause on the 21st day of March, 1902; and whereas, at a session of the United States District Court for the District of Alaska, Division No. 1, the plaintiffs herein have obtained from said Court an allowance of such appeal and a citation directed to the said Herman Meyer, John F. Malony, and J. H. Cobb, is about to be issued, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco.

And whereas it has been ordered by said Court that a bond in the sum mentioned in this obligation, to be approved by said Court, to be filed herein as required in said order:

Now, the condition of the obligation is such that if the said Frye-Bruhn Company, a corporation, shall prosecute its said appeal from said order, and shall answer all damages and costs that may be awarded against it if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and effect.

FRYE-BRUHN COMPANY,
J. J. DALY, Agent.
D. C. BROWNELL.
C. B. HARADEN.

Witnesses:

LEWIS P. SHACKLEFORD.

United States of America, }
District of Alaska. } ss.

D. C. Brownell and C. B. Haraden, being first duly sworn, each for himself, on oath depose and say: I am one of the sureties who signed the foregoing obligation; that I am a resident within the District of Alaska, and within Division No. 1 of the above-entitled court; that I am no counselor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court, or other officer of any court, and that I am worth the amount specified in the foregoing bond over and above all debts and liabilities, and exclusive of property exempt from execution.

D. C. BROWNELL.
C. B. HARADEN.

Subscribed and sworn to before me this 25th day of April, 1902.

[Seal]

I. N. WILCOXEN.

The foregoing bond is hereby approved this 25th day of April, 1902.

M. C. BROWN,
Judge.

[Endorsed]: No. 154. In the United States District Court, for the District of Alaska, Division No. 1. Frye-Bruhn Company, a corporation, Plaintiff and Appellant, vs. Herman Meyer, Defendant and Respondent, and Malony & Cobb, Respondents. Bond on Appeal. Filed April 25. W. J. Hills, Clerk. Winn and Shackelford, Attorneys for Plaintiffs and Appellants. Juneau, Alaska.

In the United States District Court for the District of Alaska, Division No. 1.

FRYE-BRUHN COMPANY (a Corporation),	} Plaintiff,
vs.	
HERMAN MEYER,	

Citation on Appeal.

United States of America—ss.

The United States to Herman Meyer and to John F. Malony and J. H. Cobb, copartners under the firm name and style of Malony & Cobb, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the United States District Court for the District of Alaska, Division No. 1, wherein Frye-Bruhn Company, a corporation is plaintiff and you are defendant in error, to show cause, if any there be, why the certain interlocutory order made and entered in said cause on the 15th day of April, 1902, modifying a temporary injunction theretofore entered in said cause upon the 21st day of March, 1902, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable MELVILLE W. FULLER,
Chief Justice of the Supreme Court of the United States,
this 25th day of April, 1902.

M. C. BROWN,
Judge of the United States District Court for the District of Alaska, Division No. 1,

Attest:

[Seal]

W. J. HILLS,
Clerk.

United States of America, }
 District of Alaska. } ss.

I, James M. Shoup, United States Marshal for District of Alaska, Division No. 1, do hereby certify that the foregoing citation on appeal came into my hands for service on the 29th day of April, 1902, and that I served the same upon Jno. F. Maloney and John H. Cobb, respondents herein, by delivering a copy of the foregoing, certified to by W. J. Hills, clerk of the United States District Court for the District of Alaska, Division No. 1, to each of them personally and in person on 30th day of April, 1902, in the town of Juneau, District of Alaska.

JAMES M. SHOUP,

United States Marshal for the District of Alaska, Division No. 1.

By E. F. Kelly,

Office Deputy.

[Endorsed]: No. 154. In the United States District Court for District of Alaska, Division No. 1. Frye-Bruhn Company, Plaintiff, vs. Hermann Meyer, Defendant. Citation on Appeal. Filed April 30, 1902. W. J. Hills, Clerk. By Deputy. Winn & Shackelford, Attorneys for Plaintiffs and Appellants, Juneau, Alaska.

*In the United States District Court for the District of
Alaska, Division No. 1.*

FRYE-BRUHN COMPANY (a Corporation),	} Plaintiff,
vs.	
HERMAN MEYER,	} Defendant.

Citation on Appeal.

United States of America—ss.

The United States, to Herman Meyer, and to John F. Malony and J. H. Cobb, copartners under the firm name of Malony & Cobb, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the United States District Court for the District of Alaska, Division No. 1, wherein Frye-Bruhn Company, a corporation, is plaintiff, and you are defendant in error, to show cause, if any there be, why the certain interlocutory order made and entered in said cause on the 15th day of April, 1902, modifying a temporary injunction theretofore entered in said cause upon the

21st day of March, 1902, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable MELVILLE W. FULLER,
Chief Justice of the Supreme Court of the United States,
this — day of April, 1902.

M. C. BROWN,
Judge of the United States District Court for the Dis-
trict of Alaska, Division No. 1.

Attest:

[Seal]

W. J. HILLS,
Clerk.

United States of America,
First Division,
District of Alaska. }

The above is a true copy from the record of an order made by the above court on the 25 day of April, 1902.

Witness my hand and the seal of said Court this 25th day of April, 1902.

[Seal]

W. J. HILLS,
Clerk.

[Endorsed]: No. 154. In the United States District Court, Division No. 1, Alaska. Frey-Bruhn Company vs. Herman Meyer. Citation.

*In the United States District Court for the District of
Alaska, Division No. 1.*

FRYE-BRUHN COMPANY (a Corporation),

Plaintiff,

vs.

HERMAN MEYER,

Defendant.

Marshal's Return.

The United States of America, }
District of Alaska. } ss.

I, James M. Shoup, United States Marshal for the District of Alaska, Division No. 1, do hereby certify that the citation on appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit issued out of the above-entitled court and cause, which is hereto attached, came into my hands on the 8th day of May, A. D., 1902, and that I served the same on Herman Meyer, the above-named defendant, by delivering to and leaving with W. F. De Mert, the agent and representative of the said Herman Meyer at the said Herman Meyer's place of business in the town of Skaguay, Alaska, a full, true, and correct copy of the said citation on appeal,

certified by me to be such, on the 10th day of May, A. D. 1902; the reason the same 'was not served by delivering the said copy to the said Herman Meyer in person was that the said Herman Meyer is temporarily absent from the town of Skaguay, with no prospects of his return to said place before the return day mentioned in said citation.

Dated this 10th day of May, A. D. 1902.

JAMES M. SHOUP,
United States Marshal.

By John W. Snook,
Deputy United States Marshal at Skaguay.

Marshal's fees, \$3.00.

[Endorsed]: Filed May 12, 1902. W. J. Hills, Clerk.

By, Deputy.

*In the United States District Court for the District of
Alaska, Division No. 1, Skaguay.*

FRYE-BRUHN COMPANY (a Cor-
poration),

Plaintiff and Appellant,

vs.

HERMAN MEYER,

Appellee.

J. H. COBB and JOHN F. MALONY,
Law Partners Under the Firm Name

and Style of MALONY & COBB,

Respondents.

Clerk's Certificate to Transcript.

The United States of America, }
District of Alaska, } ss.
Division No. 1. }

I, W. J. Hills, Clerk of the United States District Court for the District of Alaska, Division No. 1, do hereby certify that the above and foregoing 29 type-written pages numbered one (1) to twenty-nine (29) inclusive, and twenty-nine pages in all, constitute a true and correct transcript of all the record and proceedings had in the above-entitled cause, and the same is a return to the order allowing appeal herein;

That said transcript on appeal was prepared by appellant;

That the cost of examination and certification thereof amounting to two and 70-100 dollars (\$2.70) has been paid to me by appellant.

In testimony whereof, I have hereunto set my hand and the seal of said Court this 26 day of April, A. D. 1902.

[Seal]

W. J. HILLS,
Clerk.

[Endorsed]: No. 842. In the United States Circuit Court of Appeals for the Ninth Circuit. Frye-Bruhn Company, a Corporation, Appellant, vs. Herman Meyer, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed May 23, 1902.

F. D. MONCKTON,
Clerk.